

1 make it clear where this FERC 368 was being used.

2 MR. COOK: Okay.

3 BY MR. COOK:

4 Q Now you're testifying here at the FCC
5 about why the Commission, His Honor and the
6 Commission, should adopt Gulf's reasoning on the
7 payment of costs instead of the FCC's formula, but
8 you're not familiar with the FCC's reasoning, are you.

9 A I'm not -- not intricately familiar with
10 that, no.

11 Q Okay. Going back to your carrying charge
12 calculation, you included taxes to support the
13 entirety of Gulf's business including its distribution
14 business, right?

15 A I have included taxes that are described
16 as taxes other than income taxes.

17 Q Right. But I believe you testified at
18 your deposition you included taxes to support the
19 entirety of Gulf's business including its distribution
20 business, right?

21 A Yes, that's what these --

22 Q Okay.

1 A -- taxes are for.

2 Q And in general, you used taxes in your
3 replacement cost calculations that were taxes incurred
4 for the benefit of the entire Gulf Power Company, not
5 just taxes related to distribution poles and
6 distribution lines, right?

7 A I used an allocation of taxes. Perhaps it
8 would be easiest to understand by walking through that
9 formula. You take taxes as a percent of gross
10 investment to derive that portion of the carrying
11 charge.

12 MR. COOK: Could I direct your attention
13 to the deposition -- actually, here I need to hand the
14 witness the cross examination -- let's see here --
15 Exhibit -- if I may approach, Your Honor --

16 JUDGE SIPPEL: Yes, you may.

17 MR. COOK: -- a copy of your deposition
18 and show you page 49.

19 THE WITNESS: Is this not the same thing
20 that I have here?

21 MR. COOK: Right. That's not been
22 designated as an affirmative exhibit in this case.

1 JUDGE SIPPEL: It's not in the -- in other
2 words, it's not in that compilation of deposition
3 testimony.

4 THE WITNESS: Okay. All right.

5 MR. COOK: On page 49, and Your Honor, I
6 have courtesy copies for others if -- if you would
7 like --

8 JUDGE SIPPEL: Yes, I'll be glad to have
9 one.

10 MR. COOK: Turning to page 49, question,
11 starting on line 13, (reading) "And your position that
12 you testified to is that those taxes are incurred for
13 the benefit of the entire company, so that would be
14 something pole attachers should also contribute to.
15 Answer -- yes" (end reading). Did I read that
16 correctly?

17 THE WITNESS: You did.

18 MR. COOK: Okay. I'd like to turn now to
19 the third and last component of your replacement cost
20 calculation which is space allocation.

21 JUDGE SIPPEL: What kind of taxes are you
22 referring to?

1 THE WITNESS: These are title taxes other
2 than income taxes, property taxes. They may include
3 a few other occupational taxes, things as that nature.

4 JUDGE SIPPEL: Okay. Thank you. I'm
5 sorry. Go ahead.

6 MR. COOK: Okay. Thank you, Your Honor.

7 JUDGE SIPPEL: You've got a new category,
8 right?

9 MR. COOK: A new category. I'm going to
10 try and stick with the year of 2005 based on 2004
11 calculations as we look at this. If I could ask to be
12 brought up Exhibit 52, and now I think it's page seven
13 of Gulf's. These -- this page is entitled space
14 allocation, and it has various inputs. You did not
15 come up with these numbers yourself, right, Ms. Davis?

16 THE WITNESS: These were provided to me by
17 the Project Services Department of Power Delivery,
18 which is, by the way, my note on this page.

19 MR. COOK: Okay. I guess we should tab
20 that but -- so these were provided to you by Mike
21 Dunn's area, Power Delivery?

22 THE WITNESS: Yes.

1 MR. COOK: Okay.

2 BY MR. COOK:

3 Q And he provided you with all of the
4 calculations in this third category of space
5 allocations, right?

6 A He provided to me the inputs. I actually
7 did the math.

8 Q Okay. So Mr. Dunn told you that there are
9 11.5 feet of usable space on a 40 foot pole? Is that
10 right?

11 A He actually gave me these individual
12 components that are the first three lines here, and
13 they sum to 11-1/2 feet.

14 Q Okay. Now you don't know that the FCC
15 cable rate formula uses a different figure, a
16 presumption of 13-1/2 feet, do you?

17 A No, I'm not --

18 Q You're not aware of that?

19 A No.

20 Q Okay. And in your calculations on this
21 page, Exhibit 52, page seven, you use 28.5 feet of
22 unusable space on a 40 foot pole? Is that right?

1 A I've referred to that 28-1/2 feet. There
2 is common space, and it's derived by taking a 40-foot
3 pole minus the 11-1/2 feet that you previously
4 referred to.

5 Q So what you refer to as common space is
6 also referred to as unusable space?

7 A Yes, I -- I think in this context, those
8 terms are used interchangeably.

9 Q Okay. Do you know how the FCC cable rate
10 formula treats unusable space?

11 A Yes, I am somewhat familiar with that.

12 Q And what is your understanding --

13 A My understanding of that is that that
14 space is allocated based on the specific space
15 assigned to the attacher, just -- there's -- just
16 different from my calculation.

17 Q Okay. So in other words, the -- all of
18 the space on the pole, usable and unusable space, to
19 your knowledge, under the FCC space allocation is
20 based on the percentage of usable space occupied by an
21 attacher? Is that right?

22 A Yes.

1 Q Okay. And Mr. Dunn and Power Delivery
2 also supplied you the figures on Exhibit 52, page
3 seven, for the average number of attachers, right, the
4 2.80?

5 A They did.

6 Q And so if I understand correctly, your
7 calculations divide the average number of attachers,
8 2.80, into the 28.5 feet of unusable space to get
9 first a figure of 10.18? Is that right?

10 A Yes, I do, because they are each
11 benefitting from that common space.

12 Q And then you add a foot for cable's usable
13 space to get the number of 11.18, correct?

14 A I add a foot for their specific allocation
15 of the pole.

16 Q For the space that they actually use on
17 the pole, right?

18 A Yes. And so that gives the total of 11.18
19 and --

20 Q And then -- I'm sorry. You may be
21 anticipating what I'm going to ask. We got to the
22 11.8. I wanted to ask you then divide this by 40 the

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1 full total of pole height to get the space allocation
2 ration of about 28 percent, right?

3 A Yes.

4 Q Okay. By the way, you never did a
5 calculation like this for the three foot -- three feet
6 of space that are allocated to telecom attachers for
7 the telecom space, the ILECs, have you?

8 A I don't believe I was ever asked to do
9 that, no.

10 Q Okay. And in fact, you testified, I
11 believe, that you're not knowledgeable about any other
12 rates, pole attachment rates, charged by Gulf Power,
13 right?

14 A Well, you previously mentioned a telecom
15 rate. I know they exist.

16 Q Okay. But you're not familiar with
17 specific rates charged by Gulf Power?

18 A No.

19 Q Okay. So kind of summing up here, your
20 calculations seek to allocate usable space plus divide
21 up the expenses of the unusable space? Is that right?

22 A Yes, because all of the attachers are

1 benefitting from that space on the pole --

2 Q Okay.

3 A -- the space I refer to as common space.

4 Q And Mike Dunn told you to proceed that
5 way, right?

6 A Mike and I discussed that, and I -- I
7 found that to be reasonable, yes.

8 Q Now you know that Gulf Power doesn't use
9 this sort of space allocation in its relationships
10 with Bell South, Sprint or other incumbent telephone
11 companies, right?

12 MR. LANGLEY: Your Honor, I object as
13 outside the scope of her direct exam. She didn't
14 mention anything about the rates or the space
15 allocation for the ILECs in her direct.

16 MR. COOK: This question, Your Honor,
17 simply goes to her knowledge. She's done this rate
18 calculation for cable attachers. It simply says you
19 don't know whether Gulf Power uses this exact same
20 space allocation here on the printed page and part of
21 her testimony for the incumbent telephone companies.

22 MR. LANGLEY: I stand on my objection.

1 JUDGE SIPPEL: I'm going to overrule the
2 objection. I'll let you answer it.

3 THE WITNESS: Sir, he -- he asked me a few
4 minutes ago did I know the intricate details --

5 JUDGE SIPPEL: I -- I realize that. I --
6 I'm -- I'm -- I know -- I know. You've already said -
7 - testified that you don't do anything with the ILECs
8 and all.

9 THE WITNESS: Right.

10 JUDGE SIPPEL: All right --

11 MR. COOK: If the answer is she doesn't
12 know, then she doesn't know. This question simply
13 says --

14 JUDGE SIPPEL: Well, I guess the -- the --
15 really, I -- I -- I was wrong in my ruling. It really
16 is a question that was asked and answered.

17 MR. COOK: Oh, okay. I'll move on then if
18 it's asked and answered.

19 BY MR. COOK:

20 Q Now Gulf has to maintain what you refer to
21 as the common or the unusable space on its poles
22 regardless of whether there's a cable attacher in the

1 communication space or not, right?

2 A Yes.

3 Q And it has to maintain its poles for its
4 own core electric business, right?

5 A Certainly.

6 Q So what Gulf is doing here in this space
7 allocation is seeking to charge cable attachers a
8 larger share of Gulf's expenses that Gulf incurs on
9 its poles, right?

10 A Larger compared to what?

11 Q Larger than what it would incur regardless
12 -- larger than -- than what the FCC permits, right?
13 Is that your knowledge?

14 MR. LANGLEY: Your Honor, I'm going to
15 object to that question is misleading, because one of
16 the issues that we're here to face is what the FCC
17 will permit.

18 MR. COOK: Let me -- let me withdraw and
19 rephrase.

20 JUDGE SIPPEL: I'm going to sustain. Wait
21 a minute. I'm going to sustain the objection. Try it
22 again --

1 MR. COOK: Okay.

2 JUDGE SIPPEL: -- how you come at it.

3 BY MR. COOK:

4 Q Your philosophical view, Ms. Davis, is
5 that there is a greater value to the cable operator of
6 attaching to a Gulf pole than the actual cost and
7 usable space calculations under the FCC formula
8 provided, right?

9 A Would you repeat it one more time. I'm --

10 Q Okay.

11 A -- it's a long question. I want to get it
12 right.

13 Q Your philosophical view is that there's a
14 greater value to the cable operator of attaching to a
15 Gulf pole than the actual cost and usable space
16 calculations than what is provided under the FCC
17 formula, right?

18 A Yes.

19 Q Okay. And you don't know that the space
20 allocation percentage under the FCC's cable rate
21 formula is, do you?

22 A I know it's less. I don't know what the

1 number is.

2 Q You don't know that it's about 7.5
3 percent, then?

4 A No, I don't know the number.

5 Q Okay. If you were, in your replacement
6 cost calculations, to use a smaller space allocation
7 percentage like the -- you'll take my word that the
8 FCC uses 7.5 percent -- that would, in your
9 calculation, lead to a smaller annual pole attachment
10 rate, wouldn't it?

11 A Yes, it would.

12 Q In fact, 7.5 is about one-fourth of the
13 space allocation ratio that you calculate of about 28
14 percent, right?

15 A Yes. That's the math. Yes.

16 Q Okay. So everything else being the same,
17 if you used a 7.5 percent space allocation instead of
18 28 percent, the annual pole attachment rate would be
19 about one-quarter of your figures, right?

20 A Yes.

21 Q Okay. And that would be true even without
22 taking account of other reductions in a rate --

1 MR. COOK: I'm sorry --

2 JUDGE SIPPEL: No, you're not --

3 MR. COOK: I'm sorry, I thought I heard a
4 question.

5 JUDGE SIPPEL: No, no.

6 BY MR. COOK:

7 Q And that would be true even without taking
8 account of other reductions that would occur in your
9 calculations if you used the average unit cost of all
10 poles in the system and depreciation, right?

11 A Yes.

12 Q Okay. I'd like to ask a few general
13 questions on your calculations. We've talked about
14 the three components, the average cost of a new pole,
15 the carrying charges, and the space allocations. I
16 believe you said all of your replacement calculations
17 are based upon a 40 foot Gulf Power pole, right?

18 A Yes.

19 Q You never made any calculations for a 30
20 foot pole, right?

21 A No.

22 Q Never made any calculations for a 35 foot

1 pole, right?

2 A No.

3 Q Never made any calculations for a 45 or a
4 50 foot pole, right?

5 A No.

6 Q Okay. And to your knowledge, Gulf is
7 seeking in this proceeding to apply your replacement
8 cost rates to cable attachers no matter what height
9 the pole is that they're actually on, right?

10 A Yes, because it's my understanding that 40
11 foot poles are the most commonly used poles for
12 attachments.

13 Q Now let's go to some questions about your
14 actual rate numbers. In section five of your
15 testimony, page 13, you set forth the calculations
16 that you say are the difference between what the cable
17 operator complainants have paid and what they've been
18 billed at? Is that right?

19 A You're on page 13?

20 Q I believe so. Yes.

21 A Yes.

22 MR. COOK: And if I could -- could we draw

1 up Gulf Exhibit 55.

2 BY MR. COOK:

3 Q You refer to the figures -- from page 13
4 of your testimony, you refer to Exhibit 55 as the
5 source of these figures, right?

6 A Yes.

7 Q Now Exhibit 55 doesn't refer to the number
8 of attachments for which Gulf Power has billed, does
9 it?

10 A No. This is a summary.

11 Q Okay. Are the numbers of attachments for
12 which Gulf Power has billed referred to in any of your
13 exhibits or Gulf Power's Exhibits 47 through 55 to
14 your knowledge?

15 A The number -- no.

16 Q The number of cable attachers are not?

17 A No.

18 Q Okay. But your understanding is that
19 Gulf, over the last five or six years, has billed at
20 replacement cost rates for every attachment of the
21 cable operators, right?

22 A Yes. The cable operators in this case,

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1 yes.

2 Q Okay. And these figures in your Exhibit
3 55, they're not broken down by year, are they?

4 A No, they're not. They are -- like I
5 mentioned, they're a summary.

6 Q Okay.

7 A I believe I referred to the -- yes, in my
8 Exhibit, I referred to the dates that encompass these
9 billings --

10 JUDGE SIPPEL: Just to -- when you say
11 your Exhibit, meaning your testimony?

12 THE WITNESS: Yes. I'm sorry.

13 JUDGE SIPPEL: That's okay. Page 13 of
14 your testimony?

15 THE WITNESS: Yes.

16 JUDGE SIPPEL: Thank you.

17 MR. COOK: Right. And the date range, I
18 understand, is July 2000 through January 2006,
19 correct?

20 THE WITNESS: That's correct.

21 MR. COOK: Okay.

22 BY MR. COOK:

1 Q So is it accurate to say in the period in
2 that date range, from July 2000 through January 2006,
3 Gulf Power billed the cable operators at a rate of
4 \$40.60 per year per pole?

5 A I believe the first year was at \$38.06,
6 but thereafter your number is correct.

7 Q Okay. So every year from the second year,
8 which I guess would be 2001, through the present, the
9 billing has taken place at a rate of \$40.60? Is that
10 right?

11 A I had the 2000 rate, which I had
12 calculated on 1999 data of \$38.06, I believe that that
13 was used for the billing that would have been in July
14 of 2000, and thereafter the billings would have been
15 at the increased amount, \$40.00 and change.

16 Q Okay. So you -- you have billed at \$40.60
17 for, as you just said, every year since that first
18 time?

19 A Yes, I believe so.

20 Q Okay. And does that mean, if I understand
21 correctly, that the amounts, to your knowledge, that
22 Gulf is seeking in this litigation are based on the

1 difference between what was billed at the rate of
2 \$38.00 and some change the first year and \$40.60 for
3 all of the rest of the years and the difference
4 between that and what complainants actually paid? Is
5 that your understanding of what Gulf is seeking here?

6 A Including interest, yes.

7 Q Okay. Could I draw your attention to page
8 six. This is an important matter of your testimony I
9 wanted to clear up. Page six has a question --
10 (reading) "Have you performed calculations of the
11 replacement cost rentals for the years 2000 through
12 2006" (end reading). And you list the numbers \$38.06,
13 \$40.60. And then it actually goes up to about two
14 cents away from \$65.00 for this year. So my question
15 is it's your understanding in this litigation that
16 even though those are the rates you've calculated,
17 that at least for the years 2000 through 2006, Gulf is
18 seeking the difference between what it's already been
19 paid and billings based only on \$38.06 in 2000 and
20 \$40.60 for all the other years?

21 A Yes.

22 Q Okay.

1 JUDGE SIPPEL: Is that a -- is that a per
2 pole rate?

3 THE WITNESS: Yes, sir, per pole per year.

4 JUDGE SIPPEL: Per pole per year?

5 BY MR. COOK:

6 Q So the -- the rate of \$40.60 is pretty
7 central to Gulf's claim in this litigation? Would you
8 agree with that?

9 A Yes.

10 Q Okay. By the way, your Exhibit 55, the
11 summary, it doesn't make any reference as to what
12 poles are at full capacity and what poles are not,
13 does it?

14 A That level of detail is not there. No.

15 Q Okay. And it doesn't make any reference
16 to any lost opportunity that Gulf has incurred on any
17 specific poles, does it?

18 A It doesn't refer to the lost pole space,
19 no.

20 Q Okay.

21 A Is that your question?

22 Q And I believe on page 14 of your

1 testimony, you stated Gulf Power does quote, "not trap
2 cost for individual poles," right?

3 A In what -- let me find that on page 14 so
4 I can get into the right context again.

5 Q The last line of page 14, it says
6 (reading) "Also, the company's accounting records do
7 not track costs for individual poles" (end reading).

8 A That's right.

9 Q Is that right?

10 A That is correct. As the roll -- as the
11 roll-forward ledger demonstrated, we are tracking
12 costs there by composite wood versus concrete and then
13 by pole heights.

14 Q So replacement cost calculations don't
15 have a reference to specific poles out in the field,
16 do they?

17 A No, they do not.

18 Q Okay. Ms. Davis, have you ever talked to
19 Roger Spain before page third of this year -- page
20 third -- March 3rd of this year?

21 A No, I haven't.

22 Q Okay. Did he ever send you any questions

1 via email or in writing?

2 A I don't recall that. I met Mr. Spain
3 yesterday.

4 Q Okay. So you didn't -- did you send him
5 any of the sources or backup for your calculations,
6 the replacement cost calculations? Did you personally
7 provide him any sources or backup?

8 A Me personally, no.

9 Q Okay. And Mr. Spain, obviously, if you
10 just met him yesterday, he didn't check with you about
11 any of the assumptions underlying your calculations?
12 Is that right?

13 A No, he didn't.

14 Q Okay. So he didn't talk to you about the
15 FERC accounts you included in your carrying charge,
16 right?

17 A He did not talk to me personally, no.

18 Q Okay. And he didn't talk to you about
19 space allocation or your pole investment calculations
20 either, right?

21 A No. I believe he had access to my
22 testimony, but he didn't talk to me about that.

1 Q Your Honor, I have about two pages left of
2 questions. I see that it's break time. Would now be
3 an appropriate time to take a -- a midmorning break?

4 JUDGE SIPPEL: It's about 25 of 11. The
5 witness has been on the stand for about an hour and a
6 half. I think so. Would you like to take a break.

7 THE WITNESS: That would be nice.

8 JUDGE SIPPEL: All right. Let me just ask
9 one -- one question before we do. And again, this is
10 -- I generally heard this to be that the 40 -- on your
11 page six of your testimony, the \$40.60 per pole per
12 year -- well -- \$40.60 seems to be the prevailing
13 number --

14 THE WITNESS: Yes, sir.

15 JUDGE SIPPEL: -- for the period of time
16 that we're talking about here? Do you -- would you
17 have an idea, even a good estimate, of what would --
18 what is the -- the FCC formula rate for that period of
19 time?

20 THE WITNESS: I understand it's less than
21 \$10.00.

22 JUDGE SIPPEL: Less than -- something less

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1 than \$10.00?

2 THE WITNESS: Yes, sir.

3 JUDGE SIPPEL: So it's 40.60 -- \$40.60
4 less -- compared to something less than \$10.00.

5 THE WITNESS: Yes, sir.

6 JUDGE SIPPEL: All right. That's it. We
7 are in recess until ten of 11 by that clock, and
8 you're -- you're not to talk with counsel about your
9 testimony while we're taking the break. Okay?

10 THE WITNESS: Yes, sir.

11 JUDGE SIPPEL: I mean in terms of if
12 you're comfortable, you can -- you know, he could ask
13 you questions about -- or you can ask him questions
14 about, you know, am I comfortable and this type of
15 thing, but no questions about what you specifically
16 testified to.

17 THE WITNESS: Okay.

18 JUDGE SIPPEL: Okay? We're in recess.

19 (Whereupon, the matter went off the record
20 at 10:34 a.m. and back on the record at 10:53 a.m.)

21 JUDGE SIPPEL: We're on the record.
22 You're back on the stand, Ms. Davis, and you're still

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1 under oath.

2 THE WITNESS: Yes, sir.

3 JUDGE SIPPEL: Mr. Cook?

4 MR. COOK: Thank you, Your Honor.

5 BY MR. COOK:

6 Q Ms. Davis, I wanted to turn now to some
7 questions about the term marginal costs. In your
8 testimony and at your deposition, you used marginal
9 costs and replacement costs synonymously? Is that
10 right?

11 A Yes.

12 Q Olay. You view, if I understand
13 correctly, marginal cost in this case as the cost to
14 create today the space occupied by the cable operator
15 complainants? Is that right?

16 A Yes.

17 JUDGE SIPPEL: What page is that? I'm
18 sorry.

19 MR. COOK: Testimony page five, Your
20 Honor.

21 JUDGE SIPPEL: Thank you.

22 BY MR. COOK:

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